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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91262; File No. SR-FINRA-2021-003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.;
Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Permit
Firms to File a Form U4 Based on an Electronically Signed Copy of the Form

March 5, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act,” “Exchange Act,” or “SEA”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 23, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) to permit firms to file a Form U4 (Uniform Application for Securities Industry Registration or Transfer) based on an electronically signed copy of the form. In addition, FINRA proposes to make a conforming amendment to FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4).

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

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1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

1010. Electronic Filing Requirements for Uniform Forms

(a) through (b) No Change.

(c) Form U4 Filing Requirements

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this Rule [below], every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 shall be based on a [manually] signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, it shall retain the person's [manually] signed Form U4 or amendments to the disclosure information on Form U4 in accordance with SEA Rule 17a-4(e)(1) and make them available promptly upon regulatory request. An

applicant for membership also shall retain in accordance with SEA Rule 17a-4(e)(1) every [manually] signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) A member may file electronically amendments to the disclosure information on Form U4 without obtaining the subject associated person's [manual] signature on the form, provided that the member shall use reasonable efforts to:

(A) provide the associated person with a copy of the amended disclosure information prior to filing; and

(B) obtain the associated person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. As part of the member's recordkeeping requirements, the member shall retain this acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.

(3) In the event a member is not able to obtain an associated person's [manual] signature or written acknowledgement of amended disclosure information on Form U4 prior to filing of such information pursuant to paragraph (c)(1) or (2), the member is obligated to file the disclosure information as to which it has knowledge in accordance with Article V, Section 2 of the FINRA By-Laws. The member shall use reasonable efforts to provide the associated person with a copy of the amended disclosure information that was filed.

(4) No Change.

(d) through (e) No Change.

• • • Supplementary Material: -----

.01 through .02 No Change.

.03 Filing of Amendments Involving Disclosure Information. In the event a member is not able to obtain an associated person's [manual] signature or written acknowledgement of amended disclosure information on that person's Form U4 prior to filing of such amendment reflecting the information pursuant to paragraph (c)(3) of this Rule (examples of reasons why a member may not be able to obtain the [manual] signature or written acknowledgement may include, but are not limited to, the associated person refuses to acknowledge such information, is on active military service or otherwise is unavailable during the period provided for filing of such amendments under Article V of the FINRA By-Laws), the member shall enter "Representative Refused to Sign/Acknowledge" or "Representative Not Available" or a substantially similar entry in the electronic Form U4 field for the associated person's signature.

.04 No Change.

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2200. COMMUNICATIONS AND DISCLOSURES

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2260. Disclosures

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2263. Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4

A member shall provide an associated person with the following written statement whenever the associated person is asked, pursuant to FINRA Rule 1010, to [manually]

sign an initial or amended Form U4, or otherwise provide written (which may be electronic) acknowledgment of an amendment to the Form U4:

The Form U4 contains a predispute arbitration clause. It is in item 5 of Section 15A of the Form U4. You should read that clause now. Before signing the Form U4, you should understand the following:

(1) through (8) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

FINRA has been conducting an ongoing review of its rulebook to identify and amend rules to permit the use of electronic signatures. For instance, in 2019, FINRA amended Rule 4512 (Customer Account Information) to provide firms the option of obtaining the electronic signature of authorized associated persons who are exercising

investment discretion.⁴ Rule 1010 is the last remaining FINRA rule that expressly requires a manual signature.

Specifically, Rule 1010(c) (Form U4 Filing Requirements) currently requires that every initial and transfer Form U4 filed with FINRA by a member, or an applicant for membership, be based on a manually signed copy of the Form U4 provided to the member, or applicant for membership, by the individual on whose behalf the Form U4 is being filed.⁵ The member, or applicant for membership, must obtain the manually signed copy of the Form U4 prior to filing the CRD Form U4 with FINRA.

For any amendments to the disclosure information on the CRD Form U4 filed with FINRA, Rule 1010(c) currently provides a member the option of filing the CRD Form U4 based on: (1) A manually signed copy of the amended Form U4 provided to the member prior to the filing by the associated person on whose behalf the amended Form U4 is being filed; or (2) a written acknowledgment (which may be electronic) from the associated person prior to the filing that the amended disclosure information was received and reviewed.⁶ If the member cannot obtain either the manual signature or the written acknowledgment prior to the filing, the firm must still proceed with filing the amended disclosure information as to which it has knowledge and use reasonable efforts to provide

⁴ See Regulatory Notice 19-13 (April 2019).

⁵ See Rule 1010(c)(1). Members, and applicants for membership, file initial, transfer and amended Form U4s electronically with FINRA through the Central Registration Depository (“CRD®”) system (the “CRD Form U4”).

⁶ See Rules 1010(c)(1) and (c)(2).

the associated person with a copy of the amended disclosure information that was filed with FINRA.⁷

Neither the manually signed copy of the Form U4 nor the written acknowledgment is filed with FINRA, but rather is used for authentication and evidentiary purposes.⁸ The manually signed copy and, if applicable, the written acknowledgment must be retained by the member, or applicant for membership, in accordance with SEC rules and made available promptly upon regulatory request.⁹

In addition, Rule 2263 currently requires a firm to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to Rule 1010(c), to “manually” sign a Form U4, or to otherwise provide written acknowledgment of an amendment to the firm.

As noted above, FINRA has been amending its rules on an ongoing basis to permit the use of electronic signatures, and Rule 1010 is the last remaining rule that specifically requires a manual signature. In addition, the COVID-19 pandemic has

⁷ See Rule 1010(c)(3). In such cases, the firm must enter “Representative Refused to Sign/Acknowledge,” “Representative Not Available,” or a substantially similar entry in the CRD Form U4 signature field for the associated person’s signature. See Rule 1010.03 (Filing of Amendments Involving Disclosure Information).

⁸ For the purposes of the CRD Form U4 filing, the member, or applicant for membership, must type the individual’s name in the CRD Form U4 signature field to indicate that the individual has signed the form or acknowledged the information in the form.

⁹ See Rules 1010(c)(1) and (c)(2). For record retention purposes, such records may be preserved on any of the acceptable media specified in SEA Rule 17a-4, including electronic storage media consistent with SEA Rule 17a-4(f). The records must be retained for at least three years after the associated person’s employment and any other connection with the firm has terminated.

amplified the need to permit the use of electronic signatures. In 2020, in response to the outbreak of the COVID-19 pandemic, FINRA began providing temporary relief to member firms from FINRA rules and requirements via frequently asked questions (“FAQs”) on its website.¹⁰ One of these FAQs temporarily permits firms to file an initial or a transfer Form U4 with FINRA prior to obtaining the manual signature of the applicant.¹¹

Proposed Rule Change

To facilitate the use of electronic signatures and to provide members, and applicants for membership, with an opportunity to better manage the operational challenges presented by the current pandemic, FINRA proposes to amend Rule 1010(c) to provide the option of filing an initial or a transfer CRD Form U4 with FINRA based on a manually or an electronically signed copy of the form provided to the member, or applicant for membership, by the individual on whose behalf the form is being filed.¹² With respect to any amendments to the disclosure information on the CRD Form U4 filed with FINRA, the proposed rule change provides a member the option of filing such amendments based on a manually or an electronically signed copy of the amended Form

¹⁰ See Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

¹¹ See Temporary Relief Relating to Rule 1010 (Electronic Filing Requirements for Uniform Forms) (added March 18, 2020), available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#indiv>.

¹² See proposed Rule 1010(c)(1). FINRA is providing additional guidance on its website regarding the obligations of firms under Rule 1010(c) during the ongoing COVID-19 pandemic. See Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

U4 provided to the member by the associated person on whose behalf the Form U4 is being filed.¹³

Firms that choose to rely on a copy of the Form U4 electronically signed by the associated person will be required to retain the copy in accordance with SEC rules and make it available promptly upon request.¹⁴ The proposed rule change would not require the use of a particular type of technology to obtain a valid electronic signature from the associated person. For purposes of the proposed rule change, a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), the guidance issued by the SEC relating to the E-Sign Act, and the guidance provided by FINRA staff through interpretive letters.¹⁵

In conjunction with the proposed change to Rule 1010(c), FINRA proposes to make a conforming change to Rule 2263 to remove the reference to “manual” signature.

¹³ See proposed Rule 1010(c)(1). For any amendments to the disclosure information on the CRD Form U4 filed with FINRA, the member would not be required to obtain a manually or an electronically signed copy of the form from the associated person, provided that the member obtains the associated person’s written acknowledgment (which may be electronic) prior to the filing, as currently specified in Rule 1010(c)(2). Moreover, as currently specified in Rule 1010(c)(3), if the member cannot obtain either the manual or electronic signature of the associated person or the written acknowledgment of the associated person prior to the filing, the member must still proceed with filing the amended disclosure information as to which it has knowledge and use reasonable efforts to provide the associated person with a copy of the amended information that was filed with FINRA.

¹⁴ See proposed Rules 1010(c)(1) and (c)(2). These requirements are consistent with the current requirements for a manually signed copy.

¹⁵ See accord Securities Exchange Act Release No. 85282 (March 11, 2019), 84 FR 9573 (March 15, 2019) (Order Approving File No. SR-FINRA-2018-040) (discussing valid electronic signatures under existing guidance).

The proposed rule change is consistent with the SEC's recent amendments to Regulation S-T and the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") Filer Manual to permit the use of electronic signatures in signature authentication documents required under Regulation S-T in connection with electronic filings on EDGAR that are required to be signed.¹⁶

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change provides firms with the flexibility to rely on electronic signatures to satisfy the signature requirements of Rule 1010. Considering the technological advancements that provide for enhanced authentication and security of electronic signatures, FINRA believes that it is appropriate to amend Rule 1010 to provide such flexibility. The proposed rule change also addresses the on-going public health risks stemming from the outbreak of COVID-19 and the operational challenges facing firms. Significantly, FINRA understands that some firms are still unable to obtain

¹⁶ See Electronic Signatures in Regulation S-T Rule 302, Securities Exchange Act Release No. 90441 (November 17, 2020), 85 FR 78224 (December 4, 2020).

¹⁷ 15 U.S.C. 78o-3(b)(6).

the manual signature of applicants for registration resulting in a significant operational backlog. By immediately permitting these firms to rely on electronic signatures to satisfy the signature requirements of Rule 1010, the proposed rule change will reduce or eliminate this backlog.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

1. Regulatory Objective

Members, and applicants for membership, file initial, transfer and amended Form U4s electronically with FINRA through the CRD system. Rule 1010(c) currently requires that certain Form U4s filed through the CRD system be based on a manually signed copy of the form provided to a member, or an applicant for membership, by the individual (applicant for registration or associated person) on whose behalf the form is being filed. This requires that the individual on whose behalf the form is filed manually sign a printed hard copy of the completed form and return it to the member or applicant for membership. Upon receiving the manually signed copy of the form, the member, or applicant for membership, may proceed with filing the electronic version of the form through the CRD system. The manually signed copy of the Form U4 is not filed with FINRA. For purposes of the CRD filing, the member, or applicant for membership, types the individual's name in the signature field of the electronic form in the CRD system to indicate that the individual has signed the form. However, the member, or applicant for

membership, must retain the manually signed copy for record retention purposes and make it available promptly upon regulatory request. The manually signed copy may be retained in hard copy form or on compliant electronic storage media. The signature requirement is for authentication and evidentiary purposes.

The COVID-19 outbreak has amplified the need for providing members, and applicants for membership, the flexibility to obtain the electronic signature of the individual on whose behalf the Form U4 is being filed. As noted above, the SEC recently amended its rules to provide similar relief.¹⁸ Further, with enhanced authentication and security of electronic signatures created through technological development, FINRA believes that it is appropriate to amend Rule 1010(c) to provide such flexibility.

2. Economic Baseline

Under the current signature requirement, the completed Form U4 must be printed in hard copy and manually signed by the individual on whose behalf the form is being filed. The individual may manually sign it in person at the member's, or applicant for membership's, location. Alternatively, the individual may manually sign it and return it to the member, or applicant for membership, by mailing it back or by scanning and e-mailing it back.¹⁹ Upon receiving the manually signed copy of the form, the member, or applicant for membership, can proceed with filing the electronic version of the form through the CRD system. The manually signed copy must be retained for at least three

¹⁸ See supra note 16.

¹⁹ There is currently no data on how the wet signature is being returned to the member, specifically the extent to which it was mailed, scanned and e-mailed, or signed in person.

years after the associated person's employment and any other connection with the member has terminated, and it is subject to examination by regulators.

As of the end of 2019, there were approximately 625,000 registered persons. In addition, approximately one million initial, transfer and amended Form U4s were filed with FINRA in 2019. Each such filing subject to a manual signature process requires labor time and costs associated with printing, scanning or mailing.²⁰ If the manually signed copies are stored in a hard copy form, there are costs associated with such storage.

3. Economic Impact

The proposed rule change would permit individuals on whose behalf the Form U4 is filed to provide an electronic signature, as an additional option to a manual signature, to evidence that they have signed the form. The proposed rule change is expected to generate cost savings for such individuals as well as for members and applicants for membership. Specifically, they may experience the saving of time and costs related to printing and, in some cases, mailing the wet signatures. Firms may also experience the saving of costs related to the storage of records as the proposed rule change gives them the ability to turn the entire Form U4 filing process electronic. The extent of the cost saving is, however, not uniform across the filings and cannot be estimated in aggregate for two reasons. First, as noted, we do not know how the individuals are currently returning the wet signature to the member, by mail, e-mail of the scanned copy, or in-

²⁰ As previously noted, for Form U4 amendments to disclosure information, the member is not required to obtain a signed copy of the form from the associated person, provided that the member obtains the associated person's written acknowledgement or the member files the amendment consistent with the conditions described in Rule 1010.03. In addition, for Form U4 amendments to administrative information, the member is not required to obtain the associated person's signature or written acknowledgment. See Rule 1010(c)(4).

person signature. The expected cost saving would be greater for transactions shifting from in-person or mail signature to electronic signature and less for changes from e-mailing of the scanned copy to electronically signing it. Second, we do not know the nature of the Form U4 amendments, some of which currently do not require a signature.²¹

The proposed rule change implies limited costs and minimal distributional impacts by giving individuals the option, not the requirement, to sign electronically. Individuals and firms would choose to adopt electronic signatures if they perceive the expected benefits exceeding the expected costs. The costs of obtaining electronic signature software would be greatest for first time users, either through a third-party provider or in-house developed software. In circumstances where firms already have the software for doing business, the incremental cost of extending the usage to the Form U4 copy would be minimal.

Alternatives Considered

For initial and transfer Form U4s, FINRA considered whether to provide members, and applicants for membership, the option of obtaining the written acknowledgment of the individual on whose behalf the form is being filed, rather than obtaining the individual's manual or electronic signature on the Form U4 copy. FINRA determined not to provide this option. FINRA believes that it is important to have clear evidence of an individual's execution of an initial or a transfer Form U4, including his or her agreement to the attestations set forth in the form.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

²¹ See supra note 20.

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.²³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing.

The Commission notes that the proposed rule change does not impose any new obligations on FINRA members or applicants for membership. Instead, the proposed rule change provides members and applicants for membership with the flexibility to use either manual or electronic signatures on their Form U4, which is consistent with the temporary COVID-19 relief that FINRA has provided.²⁴ As discussed above, the proposed rule change also eliminates the need for members and applicants for membership to obtain a

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ See supra notes 10, 11.

manual signature pursuant to FINRA’s temporary COVID-19 relief, if they choose to rely on an electronic signature pursuant to the amended rules. As FINRA stated above, the proposed rule change would provide members and applicants for membership with an opportunity to better manage the operational challenges presented by the current pandemic by facilitating the use of electronic signatures.²⁵ FINRA stated that the COVID-19 pandemic amplified the need to permit the use of electronic signatures, and FINRA responded to this need by providing temporary relief via an FAQ on its website permitting firms to file an initial or a transfer Form U4 with FINRA prior to obtaining the manual signature of the applicant.²⁶ The Commission believes that waiving the 30-day operative delay would aid members and applicants for membership by providing them with the option to immediately rely on an electronic signature pursuant to this rule, as well as promote operational efficiency by allowing FINRA to immediately update its existing guidance regarding the obligations of members and applicants for membership under Rule 1010(c) in its temporary COVID-19 relief to reflect the proposed rule change. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁷

²⁵ See supra note 12 and accompanying text.

²⁶ See supra notes 10, 11 and accompanying text.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2021-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-003 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁸ 17 CFR 200.30-3(a)(12).